CUSTOMS, EXCISE AND SERVI
CE TAX APPELLATE TRIBUNAL
SCO 147-148, SECTOR 17-C, CHANDIGARH – 160 017

COURT NO. I

APPEAL NO.ST/236-237/2016

[Arising out of Order-in-Original No.22-23/ST/COMMR/HG/RTK/2015-16 dated 30/12/2015 passed by the Commissioner of Central Excise & Service Tax, Rohtak]

Date of hearing/decision: 22/03/2018

For approval and signature:

Hon'ble Mr. Ashok Jindal, Member (Judicial)
Hon'ble Mr. Anil G Shakkarwar, Member (Technical)

Agarwal Traders : **Appellant(s)**

VS

C.C.E. & ST, Rohtak : **Respondent(s)**

Appearance:

Shri.Vineet Kumar Singh, Advocate present for the Appellant(s):
Shri.G.M. Sharma, AR present for the Respondent(s):

CORAM:

Hon'ble Mr. Ashok Jindal, Member (Judicial)
Hon'ble Mr. Anil G. Shakkarwar, Member (Technical)

FINAL ORDER NO. 62377-62378/2018

Per : Ashok Jindal

1. The appellant is in appeal against the impugned order demanding service tax along with interest and various penalties under the Finance Act, 1994.

2. The facts of the case are that the appellants are engaged in the activity of erection, commissioning and installation services/work contract services to Dakshin Haryana Bijli Vitran Nigam (DHBVN in short) and Uttar Haryana Bijli Vitran Nigam (UHBVN in short). During the period 2009-2010 to 2012-2013 without obtaining the service tax registration and without payment of service tax. On the basis of information received that DHBVN received various services from the appellant of whose details were provided by the appellants. The appellant submitted copy of the balance sheet and form 26AS. On scrutiny of the documents, it was alleged that the appellants were engaged in providing erection, commissioning, installation services/work contract services upto 30/06/2012 and thereafter having the contracts for supply and erection of works. On the basis of documents submitted, two show-cause notices were issued to the appellants to demand service tax on the services provided by them and consequently the adjudication took place. The adjudicating authority found that the appellants provided the services are in nature of in relation to distribution of electricity, therefore, in terms of Notification No.45/2010-ST dated 20/07/2010 upto 31/06/2010, the appellant was not liable to pay service tax but for the subsequent period, in terms of negative list regime, started the benefit of said notification shall not available to the appellant. Consequently, for the rest of the period the demand of service tax was confirmed along with interest and various penalties were imposed. Aggrieved by the said order, the appellant is before us.

3. The Ld. Counsel for the appellant submits that it is no doubt and admitted fact that the appellant is providing services in relation

to the distribution of electricity to various distribution licencees, namely DHBVN & UHBVN. Therefore, in terms of Notification No.32/2010-ST dated 22/06/2010, the services provided by the appellants are exempted from payment of service tax. He further submitted that the sole ground for denial of benefit of Notification is that the appellant is not a distribution agent licensees, therefore, they are not entitled to get the benefit of notification. It is his submission that the appellant has provided the services on behalf of the distribution licensee, namely, DHBVN & UHBVN. Therefore, in the light of the decision in the case of Canara Bank – 2012 (28) STR 369 (Tri-Ahmed) and in the case of State Bank of Patiala – 2016 (45) STR 333 (Tri-LB), the appellant being an agent of distribution licensee is entitled for the benefit of exemption Notification No.32/2010-ST dated 22/06/2010 and is not liable to pay service tax, therefore, the impugned order is to +be set aside.

4. On the other hand, the Ld. AR reiterated the findings in the impugned order and submitted that the appellant is not entitled to get the benefit of Notification No.32/2010-ST dated 22/06/2010 whereas the benefit of Notification No.45/2010-ST dated 20/07/2010 has already been granted to the appellant.

5. Heard both sides and perused the records.

6. We find that in this case the facts of the case are not in dispute that the appellant is providing services in relation to distribution of electricity to DHBVN & UHBVN and upto 21/06/2010, the benefit of Notification No.45/2010-ST dated 20/07/2010 has already been granted to the appellants. The sole ground for denial of benefit of

exemption Notification No.32/2010-ST dated 22/06/2010 is that the appellant is not a distribution licensee or distribution franchisee or any other person authorized under the Electricity Act for distribution of electricity. For better appreciation Notification No.32/2010-ST dated 22/06/2010 is extracted below:

> ***Exemption to taxable service provided for distribution of electricity***
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> *In exercise of the powers conferred by sub-section (1) of section 93 of the Finance Act, 1994 (32 of 1994) (hereinafter referred to as 'the said Finance Act'), the Central Government, on being satisfied that it is necessary in the public interest so to do, hereby exempts the taxable service provided to any person, by a distribution licencee, a distribution franchisee, or any other person by whatever name called, authorized to distribute power under the Electricity Act, 2003 (36 of 2003), for distribution of electricity, from the whole of service tax leviable thereon under section 66 of the said Finance Act.*
>
> *2. This notification shall come into force on the date of its publication in the Official Gazette.*
>
> *[Notification No. 32/2010-S.T., dated 22-6-2010]*

7. The ground for denial of exemption to the appellants is that the appellant is not a distribution licensee. Admittedly, the appellant is providing the services of distribution of electricity on behalf of DHBVN & UNBVN, who are the distribution licensees. Therefore, it is to be seen that whether the appellant got the right for transmission of electricity from their principals. Admittedly, the appellant has provided these services on behalf of the distribution licensee, who are having license to distribute the electricity. Therefore, it is to be seen that whether the appellant is entitled to the benefit of Notification or not. In the case of Canara Bank (supra) this Tribunal got an occasion to examine the issue whether a person, who is providing services on behalf of the principal is entitled to the benefit

of notification or not, the same is being examined by this Tribunal and observed as under:

> *12. From the above it can be seen that RBI have the right to transact Government business and allow an agent to perform its function. …………….*
>
> > *5. The first question that we have to consider is whether an agent of a principal who is also a dealer under the Act is entitled to the same rights as his principal has under the Act. Under the general law the agent merely represents his principal. Therefore, while functioning within the scope of the agency he can exercise all the rights which his principal could have exercised. In fact, in the case of an ordinary agency, the agent merely acts for his principal. This provision must hold good even under the Madras General Sales Tax Act unless otherwise provided therein. The fact that for the purpose of that Act an agent is considered as a dealer does not alter the legal position in other respects. Excepting to the extent otherwise provided in the Madras General Sales Tax Act the agent must be held to represent his principal while dealing with the goods of his principal; he merely steps into the shoes of his principal. He is entitled to the same exemptions as his principal would have got had he dealt with the concerned goods himself. Agents are considered as dealers under the tax so as to effectively enforce the provisions of the Act. But that provision does not convert an agent into a principal for all purposes under the Act."*
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> *13. The above observations of the Hon'ble Supreme Court make it clear that exemption to the principal would be available to the agent also. For this purpose, since the agent is eligible for the exemption which is available to the principal in terms of the relationship with the principal of the agent and not because of exemption granted specifically to the agent or principal, we have to hold that the appellant is eligible for exemption. If RBI were to undertake the activity there would have been no question of levy of service tax. It was also brought to our notice that RBI is not paying service tax. Same functions being carried out by RBI are exempted. Therefore, we hold that the benefit of exemption available to RBI would be available to the agent i.e. Canara Bank.*
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> > *III. The services are in the nature of statutory/sovereign functions and hence not liable to service tax.*

8. As this Tribunal held that an exemption to the principal would be available to agent also and further in the case of State Bank of

Patiala (supra), this Tribunal followed the same principle and allow the benefit of exemption notification.

9. In view of the above discussion, we hold that as the appellant is providing services on behalf of the principal, who is having a license as distribution licensee to distribute electricity under the Electricity Act. Therefore, the benefit exemption Notification No.32/2010-ST dated 22/06/2010 cannot be denied to the appellant.

10. In view of the above analysis, we hold that the appellant has correctly availed the benefit of exemption Notification No.32/2010-ST dated 22/06/2010. Therefore, we do not find any merit in the impugned order and the same is set aside. In result, the appeals filed by the appellant are allowed with consequential relief, if any.

(Operative part pronounced in the court)

(Anil G. Shakkarwar)
Member (Technical)

(Ashok Jindal)
Member (Judicial)

PJ